

ESTATE OF KATIE ROSS STEPHENS

IBIA 81-43

Decided June 4, 1982

Appeal from order issued following rehearing by Administrative Law Judge Daniel S. Boos affirming prior determination of heirs in probate of intestate Indian trust estate. (Indian Probate No. 33465-15; IP BI 440B-81.)

Affirmed.

1. Indian Probate: Reopening: Evidence: Insufficiency of

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

APPEARANCES: Oliver E. Davis, Esq., for appellant Mary Ellis Leonard.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

[1] On May 19, 1981, the Administrative Law Judge below denied a petition to reopen an estate closed in 1915 which determined the heirs of decedent Katie Ross Stephens, Wichita Allottee 288, who died on August 24, 1909. The decision appealed from, in the opinion of the Board, correctly summarizes appellant's petition for rehearing, analyzes the relevant facts, and correctly applies the law governing applications to reopen to this case. For the reasons stated in the attached decision denying petition, which the Board adopts as its opinion in this case, the appeal must be denied.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order below denying petition for reopening is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry F. Muskrat
Administrative Judge

Attachment

United States Department of the Interior
Office of Hearings and Appeals
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Indian Probate No.
33465-15
IP BI 440B-81

IN THE MATTER OF THE ESTATE OF	:	
	:	
KATIE ROSS STEPHENS	:	ORDER DENYING PETITION
	:	FOR REOPENING
DECEASED ALLOTTEE 288 OF THE	:	
WICHITA TRIBE IN THE STATE OF	:	
OKLAHOMA	:	

An order determining heirs was issued in the estate of Katie Ross Stephens on August 9, 1915. She had died on August 24, 1909.

It was determined that she was survived by Hortie Stephens, husband, and five children, three of whom had subsequently died.

On April 8, 1981, a petition for reopening was filed by Mary Ellis Leonard, a great-granddaughter of Katie Ross Stephens.

Petitioner provided copies of the proceedings in the estates of Katie Ross Stephens, Hortie Stephens, and Ula Frazier Stephens (the second wife of Hortie Stephens).

Petitioners' contention is stated as follows:

As can be observed from an examination of these estates, Katie Ross Stephens was the first wife of Hortie Stephens and Ula Frazier was his second wife. The error which I am requesting be corrected was the determination that Hortie Stephens should inherit as the husband of Katie Ross Stephens at the time of her death in 1909. The testimony of both her daughter, Ida Ross (my grandmother) and of her mother, Deatsah, affirm that Katie Ross Stephens and Hortie Stephens had been divorced by Indian custom for four years before she died.

The determinations in both the probates of Ula Frazier Stephens and Hortie Stephens affirm that they were married by Indian custom in 1907 and by ceremony in 1911. In fact, their first son, Richard Stephens was born in August of 1907, two years before the death of Katie Ross Stephens.

At the hearing in the Katie Ross Stephens estate Hortie Stephens testified that he had married Katie in "about 1887" and that they had separated "about a year" before her death. Hortie was asked "Did either you or Katie get a divorce by law when you separated?" He answered "No."

Ida Ross, daughter of Katie, testified that Hortie and Katie had been separated "about four years." Ida was asked "Did either of them get a divorce when they separated?" She answered, "No."

Deatsah, mother of Katie, testified that the separation took place "about four years before she died."

The file submitted in the Ula Frazier Stephenson estate is not complete but a memo (which undoubtedly was forwarding the file to Secretary for final decision) signed by E. B. Merritt, Assistant Commissioner, contains the following statement -- "Her second husband was Hortie Stephens x x to whom she was married by Indian Custom about 1907, and by ceremony November 29, 1911."

The basis for this finding is the following answer given by Hortie Stephens when asked when and where he and Ula had married-- "we began living together about 20 years ago, and afterwards we were married by Mr. Wilkin, a preacher." This testimony was given in 1927. Note that Hortie did not state that he and Ula were married by Indian Custom. This is a gratuitous interjection by Mr. Merritt. Hortie stated only one fact "We were married by Mr. Wilkin, a preacher."

Petitioner concludes that an examination of the record, the parts of which most favorable to the petitioner are set forth above, "will make the blatant inconsistencies readily apparent." Of course this is from the perfect vantage point of hindsight.

However, one very obvious question arises. Why did no one raise the issue of divorce at the original hearing? Ida, a daughter, and Deatsah, mother of decedent both testified. The record before me is not complete so I do not know if other family members were present but they all surely were aware of the decision. No one raised a single question as to the existence of a valid marriage. No one suggested that an Indian custom divorce had been effectuated. No one appealed the decision. There is no indication that even an informal protest was registered.

Further, on October 15, 1925, a request for a land exchange was submitted to the Superintendent, Kiowa Indian Agency by "we, the heirs of Kate Ross Stephens." It was signed by Hortie Stephens, Oscar Stephens Ross, Ida Ross and Thomas Stephens.

A reasonable explanation is available. Neither Hortie nor Katie considered themselves to be divorced. Neither Hortie nor Ula, at the time, considered themselves to be married. Their relationship was regarded by all parties as illicit. Hortie and Ula did, after all, enter into a ceremonial marriage at a later date.

The regulation applicable to cases where a petition for reopening is filed more than three years after the final order, 43 CFR Sec. 4.242(h) requires a showing, inter alia, that "petitioner had no actual notice of the original proceedings." The petitioner here was probably not even born when the proceedings took place. However, her grandmother was, and participated therein as a witness.

All the principals in the case are now deceased. If the case were to be reopened a new determination would, of necessity, be based on rank speculation. The original decision was made on the basis of testimony by family members. I find no compelling reason to reopen the case.

Accordingly, the petition for reopening, filed by Mary Ellis Leonard, is hereby denied.

Done at Billings, Montana and dated May 19, 1981.

Daniel S. Boos
Administrative Law Judge